



BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XR036

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Oil and Gas Activities in Cook Inlet, Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; request for comments on modification of Letter of Authorization.

SUMMARY: Pursuant to the Marine Mammal Protection Act (MMPA), as amended, and implementing regulations, NMFS is requesting comments on its proposal to modify a Letter of Authorization issued to Hilcorp Alaska LLC (Hilcorp) to take marine mammals incidental to oil and gas activities in Cook Inlet, Alaska.

DATES: Comments and information must be received no later than [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

Physical comments should be sent to 1315 East-West Highway, Silver Spring, MD 20910 and electronic comments should be sent to *ITP.Young@noaa.gov*.

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at <https://www.fisheries.noaa.gov/action/incidental-take-authorization-hilcorp-alaska-llc-oil-and-gas-activities-cook-inlet-alaska> without change. All personal identifying information (*e.g.*, name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Sara Young, Office of Protected Resources, NMFS, (301) 427-8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An incidental take authorization shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the

availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined “negligible impact” in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The MMPA states that the term “take” means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, the MMPA defines “harassment” as: Any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Summary of Request

NMFS issued regulations governing the take of eleven species of marine mammal, by Level A and Level B harassment, incidental to Hilcorp’s oil and gas activities on July 31, 2019; 84 FR 37442). These regulations include mitigation, monitoring, and reporting requirements for the incidental take of marine mammals during the specified activities. As detailed in the regulations (50 CFR 217.167), adaptive management measures allow NMFS to modify or renew

Letters of Authorization as necessary if doing so creates a reasonable likelihood of more effectively accomplishing the goals of mitigation and monitoring set forth in those regulations.

NMFS proposes to modify a mitigation measure pertaining to 3D seismic surveying during Year 1 of Hilcorp's activity. NMFS published a mitigation measure in error that stated before ramp up of seismic airguns during the 3D seismic survey, the entire exclusion zone (EZ) must be visually cleared by protected species observers (PSOs). This measure is correct for operations beginning in daylight hours. However, visually clearing the entirety of the EZ to ramp up airgun activity at night was not NMFS' intent. The intent was that PSOs should monitor the EZ to the greatest extent possible for 30 minutes prior to ramp-up of nighttime operations, but with the understanding that it is not possible to observe the entirety of the EZ at night and that Hilcorp would still be allowed to initiate ramp-up as long as no marine mammals were seen during this time. If any marine mammal is observed in the EZ, during daylight hours or at night, ramp up would not commence until either the animal has voluntarily left and been visually confirmed outside the EZ or the required amount of time (15 for porpoises and pinnipeds, 30 minutes for cetaceans) have passed without re-detection of the animal. The analysis and findings contained in the final rule were made under the premise that nighttime ramp up of airguns is allowable.

Ramping up airgun activity at night is essential to Hilcorp's survey design and minimizes the amount of days that active acoustic sources are emitting sound into the marine environment. As described in Hilcorp's application, acquisition of one line of 3D seismic takes approximately five hours. At the end of a line while the vessel turns to prepare for the next line acquisition,

NMFS requires that airguns are turned off, to reduce the amount of unnecessary noise emitted into the marine environment. Turning the source vessel takes approximately one and a half hours, during which no noise is emitted from airguns. By allowing ramp up of airguns at night, the total number of 3D seismic survey days is notably reduced and marine mammal habitat noise will sooner be reduced to ambient noise levels.

Specifically, while there is a somewhat higher probability that a marine mammal might go unseen within the clearance zone when the airguns are initiated at night, the likelihood of injury is still low because of the ramp-up requirement, which ensures that any initial injury zone is small and allows animals time to move away from the source, and the fact that PSOs are on duty monitoring the exclusion zone to the degree possible at that time. Further, any potential slight increase in the probability of injury (in the form of a small degree of PTS, and not considered at all likely, or authorized, for beluga whales or other mid-frequency specialists) is offset by the reduced behavioral harassment and reduced potential for more serious energetic effects expected to result from the significant reduction in the overall number of days across which the area will be ensonified by the airgun operation.

Ramp up of airguns at night is also the most practicable survey design, which allows the survey to be completed as quickly as possible before weather conditions deteriorate and daylight decreases in Cook Inlet, and at less cost.

Of important note, this change in mitigation does not change either the predicted take numbers or the negligible impact analysis, as the predicted Level A harassment (injury) numbers

conservatively do not include any sort of an adjustment to account for the effectiveness of any of the measures.

Request for Public Comments

In order to maintain a transparent process for issuance of incidental take authorizations and because the public was not able to comment on this mitigation measure, NMFS is requesting comment on amending the Year 1 Letter of Authorization to allow ramp up of airguns at night without requiring full clearance of the EZ by PSOs. Full clearance of the EZ by PSOs would still be required for all operations in daylight hours. A draft of the amended LOA is available at: <https://www.fisheries.noaa.gov/action/incidental-take-authorization-hilcorp-alaska-llc-oil-and-gas-activities-cook-inlet-alaska>.

Dated: August 13, 2019.

Cathryn E. Tortorici,
Acting Director,
Office of Protected Resources,
National Marine Fisheries Service.

